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## **BEFORE THE AIR QUALITY CONTROL COMMISSION, STATE OF COLORADO**

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In the Matter of Proposed Revisions to Colorado Air Quality Regulation Number 3, Parts A, B, and C, Regulation Number 6, Part A, and Regulation Number 7

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### **MOTION REQUESTING CERTAIN DEADLINES FOR ALL ECONOMIC, COST BENEFIT, AND REGULATORY ANALYSES AND RESPONSES**

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Bill Barrett Corporation, Black Hills Exploration and Production, Bonanza Creek Energy, Inc., PDC Energy, Inc., and Whiting Oil and Gas Corporation (“the DGS Client Group”), together with the Colorado Petroleum Association, Colorado Oil & Gas Association, Chevron, U.S.A., Inc., and its affiliates Chevron Midcontinent, L.P., and Four Star Oil & Gas Company, (collectively “the Moving Parties”) submit this **MOTION REQUESTING CERTAIN DEADLINES FOR ALL ECONOMIC, COST BENEFIT, AND REGULATORY ANALYSES AND RESPONSES** (“Motion”) in relation to the Air Quality Control Commission’s (“Commission’s”) consideration of proposed revisions to Regulation Number 3, Parts A, B, and C, Regulation Number 6, Part A, and Regulation Number 7 (“Proposed Revisions”).

#### **I. BACKGROUND**

On December 13, 2013, the DGS Client Group submitted a Request for Cost-Benefit Analysis and Regulatory Analysis (the “APA Analyses”) under the Colorado Administrative Procedure Act (“APA”) in the above-captioned matter regarding revisions to Colorado Air Quality Control Commission Regulation Number 3, Parts A, B, and C; Regulation Number 6, Part A; and Regulation Number 7 (“APA Request”). Numerous other parties to this rulemaking proceeding (“Parties”) submitted similar requests on or around the same date. The DGS Client Group submitted its APA Request on the same day as it requested party status specifically to afford the Air Pollution Control Division (“Division”), as proponent of the Proposed Revisions, ample time to prepare the APA Analyses, and to allow all Parties an opportunity to rebut or comment upon those analyses for the benefit of the Commission in its deliberations. This Motion respectfully seeks to ensure that such an opportunity is afforded all Parties.

The DGS Client Group’s APA Request was timely filed under both C.R.S. § 24-4-103(2.5), which requires submittal of a cost-benefit request to the Department of Regulatory Agencies (“DORA”) within five (5) days of publication in the Colorado Register of a proposed rule, and C.R.S. § 24-4-103(4.5), which requires a request for regulatory analysis to be submitted to the Division at least fifteen (15) days prior to the rulemaking hearing. These statutory deadlines notwithstanding, the DGS Client Group (and other Parties) made the APA Request at the first possible instance (*i.e.*, the same day as party status was requested). With respect to

statutory deadlines for completion of these APA Analyses, a cost-benefit analysis required under C.R.S. § 24-4-103(2.5) must be completed and made publicly available at least ten (10) days before the hearing on the proposed rule and a regulatory analysis required by C.R.S. § 24-4-103(4.5) must be available to the public at least five (5) days prior to the rulemaking hearing.

During the December 19, 2013, Party Status Conference held at the Division's offices, the Commission Administrator and Hearing Officer indicated that, although a Final Economic Impact Analysis ("Final EIA") is due on January 30, 2014, the APA Analyses would be made available when ready, and no later than otherwise required by statute. In response, counsel for the DGS Client Group raised concerns that all Parties be provided a reasonable opportunity to respond to the APA Analyses in order to fulfill the statutory purpose of the APA and avoid prejudice, and requested that the APA Analyses be provided to the Parties no later than January 30, 2014. The Hearing Officer then invited the DGS Client Group's counsel to submit a procedural motion on this request for earlier deadlines by Friday, December 20, 2013. The Moving Parties timely submit this procedural Motion requesting the Commission identify and commit to reasonable deadlines for all economic, cost-benefit, and regulatory analyses and responses.

The Moving Parties are concerned that, by not requiring all economic, cost-benefit, and regulatory analyses to be submitted on the same date (*i.e.*, January 30, 2014), the APA Analyses will be issued after the Final EIA and potentially without sufficient time for Parties to adequately respond in writing. Moreover, the statutory deadlines for the APA Analyses are not aligned. Relying on these statutory deadlines will result in piecemeal submissions (potentially three different impact analyses issued on three separate dates), and will substantially complicate what already promises to be a voluminous record.

As noted elsewhere, the rule being proposed is significant both in its scope and potential economic and regulatory impacts. This is evidenced by the number of Parties that have already requested party status as well as the numerous requests received for the APA Analyses. Minimum due process protections, the Commission's Procedural Rules, and sound public policy all demand that the Parties have an adequate opportunity to review the entire record, including the Division's full regulatory impact projections, and an opportunity to respond to those projections on the record, and in writing. Perhaps more importantly, the Commission needs the opportunity to review these significant Proposed Revisions (and any alternatives) with the aid of the most robust economic and regulatory impact analyses possible—including appropriate party comments regarding, and responses to, the Division's APA Analyses, as well as any alternative analyses that may be provided. This is particularly important because the proposed rules diverge in important respects from the proposed rules developed during the nearly ten-month stakeholder process. In light of the already expedited schedule upon which the rulemaking is proceeding, the most fair, effective, and efficient means of ensuring that these goals are met, and that the public and Parties are afforded a meaningful opportunity to participate, is to require that all economic, cost-benefit, and regulatory impact analyses be completed and provided to all Parties on the same date. Such date should occur far enough in advance of the rulemaking hearing for Parties to respond in writing on the record, and for the Commissioners to have a reasonable opportunity to

review such responses in advance of the hearing. Accordingly, the Moving Parties respectfully make the following request for relief.

## **II. RELIEF REQUESTED**

For the reasons stated above and consistent with the Commission's Procedural Rules, the Moving Parties respectfully request that the Commission identify and commit to reasonable deadlines for all economic, cost-benefit, and regulatory analyses and response, including the APA Analyses. The Commission's Procedural Rules "are designed to promote open, fair, and effective proceedings" and "produce thoughtful and well-informed decisions . . . well supported by technical and scientific data." 5 CCR 1001-1 at § I. The Procedural Rules contemplate the filing of certain procedural motions that may be disposed of prior to receiving testimony or evidence. *Id.* at § V.E.9. This is such a motion. The Procedural Rules also grant the Commission discretion to consider such motions and alter deadlines for purposes of efficiency and fairness, among others. *Id.*; *see also* § II.D. ("Except when necessary to comply with applicable statutes or to provide due process, the requirements of these procedural regulations may be waived by the Commission whenever it is determined that strict adherence to the rules is not in the best interest of fairness, impartiality, or any efficient proceeding before the Commission.")).

To ensure an open, fair, and effective proceeding as well as a thoughtful and well-informed decision-making supported by sound economic and regulatory data, the Moving Parties respectfully request that the Commission order that all economic, cost-benefit, and regulatory analyses conducted in connection with the Proposed Revisions—including the APA Analyses—be completed and made available to all Parties no later than January 30, 2014. The Moving Parties also request that the Commission order that any response or rebuttal to those analyses be due five (5) working days later (February 6, 2014). The Moving Parties believe that the requested relief will foster a more informed and effective rulemaking, with no prejudice to the Division or other Parties. As discussed above, the DGS Client Group made the APA Request at the first possible instance to provide the Division with sufficient time to complete the requested APA Analyses and in more time than is contemplated under both previous and current versions of the APA. Before the recent revisions to the APA, the cost-benefit request to DORA could be made as late as twenty days before the hearing, effectively providing the Division only fifteen days to complete the analyses. *See* C.R.S. § 24-4-103(2.5) (2012). And as noted above, the regulatory analysis under C.R.S. § 24-4-103(4.5) can be requested as late as fifteen (15) days before the hearing. Even under the slightly reduced response schedule requested herein, the Division will still have forty-eight (48) days to prepare the requested APA Analyses.

In the alternative, should the Hearing Officer decide not to grant this Motion, the Moving Parties respectfully request that all Parties be provided the opportunity to submit a written response or rebuttal to any economic, cost-benefit, or regulatory impact analysis into the record at or prior to the rulemaking hearing, regardless of when the Division serves its APA Analyses on the Parties to this proceeding.

### III. CONCLUSION

For the foregoing reasons, the Moving Parties respectfully request that the Hearing Officer grant this **MOTION REQUESTING CERTAIN DEADLINES FOR ALL ECONOMIC, COST BENEFIT, AND REGULATORY ANALYSES AND RESPONSES**. In granting this Motion, the Hearing Officer would require that all economic, cost-benefit, or regulatory impact analyses be submitted no later than January 30, 2014, including the APA Analyses, and that any responses to such analyses be submitted no later than February 6, 2014. In the alternative, should the Motion be denied (in whole or in part), the Moving Parties respectfully request that the Hearing Officer provide in his order ruling on this Motion that all Parties will be provided the opportunity to submit a written response or rebuttal to any economic, cost-benefit, or regulatory impact analyses into the record at or prior to the rulemaking hearing, regardless of when the Division serves its APA Analyses on the Parties to this proceeding.

Dated this 20th day of December, 2013 by:

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the attached Motion Requesting Certain Deadlines for all Economic, Cost Benefit, and Regulatory Analyses and Responses was served by electronic mail on the 20<sup>th</sup> day of December, 2013, upon the following:

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